

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Terry Lee Branson,

Case No. 16-cv-2802 (WMW/LIB)

Plaintiff,

ORDER

v.

Kevin D. Moser et al.,

Defendants.

This matter is before the Court on Defendants' appeal of the January 30, 2019 Order of United States Magistrate Judge Leo I. Brisbois. (Dkt. 75.) For the reasons addressed below, Defendants' appeal is denied as moot.

Plaintiff Terry Lee Branson commenced this action on August 19, 2016, and filed an amended complaint on December 26, 2018.¹ The amended complaint names as Defendants fifteen Minnesota state employees in their official and individual capacities. Defendants filed a motion to dismiss Branson's amended complaint on January 7, 2019. In that motion, defense counsel, an Assistant Attorney General, purported to represent the fifteen Defendants in their official capacities but only ten of the Defendants in their individual capacities. The magistrate judge concluded that defense counsel could not purport to represent *all* Defendants in their official capacities but only *some* Defendants in their individual capacities. For this reason, in his January 30, 2019 Order, the magistrate

¹ The substantial period of time between the filing of the original complaint and the filing of the amended complaint is due, in part, to this case being stayed from June 30, 2017, until October 22, 2018.

judge concluded that the fifteen Defendants “have either been served or waived service of process” and ordered Defendants’ January 7, 2019 motion to dismiss and supporting documents stricken from the record without prejudice for failing to respond to all of Branson’s individual-capacity claims. Pursuant to the January 30, 2019 Order, Defendants were required to answer or otherwise respond to all of Branson’s claims by February 20, 2019.

Defendants filed a “Notice of Withdrawal and Substitution of Counsel” on February 7, 2019, in which defense counsel withdrew from the case and another Assistant Attorney General filed a notice of appearance on behalf of all Defendants in their official and individual capacities. Notably, the February 7, 2019 Notice states:

Defendants Piper, Johnston, Vaineo, McEachran, and Becker have been certified for defense and indemnity under Minn. Stat. § 3.763, subd. 9 and waive service. The undersigned now appears as counsel for Defendants Piper, Johnston, Vaineo, McEachran, and Becker in their official and individual capacities.

Defendants subsequently filed a renewed motion to dismiss Branson’s amended complaint and the pending appeal of the magistrate judge’s January 30, 2019 Order.

“Federal courts are not empowered to give opinions on moot questions or declare rules of law which cannot affect the matter in issue in the case before it.” *United States v. Asset Based Res. Grp., LLC*, 612 F.3d 1017, 1018-19 (8th Cir. 2010) (internal quotation marks omitted). Here, Defendants argue that the magistrate judge’s January 30, 2019 Order is contrary to law because the Office of the Minnesota Attorney General “cannot accept personal service for or appear on behalf of an individual-capacity defendant who is not certified for defense and indemnity.” But the five Defendants who had *not* been

certified for defense and indemnity on January 30, 2019, subsequently became certified for defense and indemnity. The Office of the Minnesota Attorney General now represents the fifteen Defendants in their official and individual capacities and has filed a motion to dismiss the amended complaint on their behalf. As such, nothing in the record suggests that a live controversy exists with respect to the issues Defendants have appealed. Under these circumstances, a decision on the merits of Defendants' appeal would do nothing more than provide an opinion on a moot question or declare a rule of law that will not materially affect this case. This Court is empowered to perform neither task. *See id.*

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendants' appeal of the January 30, 2019 Order, (Dkt. 75), is **DENIED AS MOOT**.

Dated: March 27, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge